title toward the center of the stream as far as the grantor owns.[29] When the lands conveyed are bounded, not by the water, but by the "shore," "beach," "coast," "bank," or similar designation, the soil under the water is usually excluded.[30] But the cases are in conflict as to whether the shore is included in such a grant. Some courts construe the deed as conveying title to the low-water mark if the grantor owns so far,[31] others exclude the shore and fix the boundary at high-water mark. A recent Canadian case, *Esquimalt & Nanaimo Ry. Co.* v. *Trent*,[32] follows the view which fixes the boundary at high-water mark. The same reasons, however, which support the widely accepted construction under which grants of lands bounded by waters convey title to the center of the stream should apply with equal force in favor of a rule which gives the grantee title to the low-water mark.

CONTROL OF EXECUTIVE OFFICERS BY *MANDAMUS*. — A writ of *mandamus* is one issuing in the name of the sovereign to an inferior tribunal, corporation, board, or person, commanding the performance of an act which the law enjoins as a duty attaching to an office or trust.[1] It is an extraordinary remedy to be resorted to only in the absence of other adequate legal remedy.[2] It is to be distinguished from the preventive writ of injunction,[3] and the reviewing writ of *certiorari*.[4]

The general principles governing the issuance of the writ are well defined, but their application gives rise to considerable difficulty. The writ issues only in the sound discretion of the court,[5] but this discretion

[29] Paine *v.* Woods, 108 Mass. 160 (1871); Agawam Canal Co. *v.* Edwards, 36 Conn. 476 (1870); Ballance *v.* Peoria, 180 Ill. 29, 54 N. E. 428 (1899); Partridge *v.* Luce, 36 Me. 16 (1853). "Without adhering rigidly to such a construction, water gores would be multiplied by thousands along our inland streams, great and small, the intention of the parties would be continually violated, and litigation would become interminable." Luce *v.* Carley, 24 Wend. (N. Y.) 450 (1840).

[30] Starr *v.* Child, 20 Wend. (N. Y.) 149 (1838). *Contra*, Sleeper *v.* Laconia, 60 N. H. 201 (1880).

[31] Lamb *v.* Rickets, 11 Ohio, 311 (1842); Halsey *v.* McCormick, 13 N. Y. 296 (1855); Murphy *v.* Copeland, 58 Iowa, 409, 10 N. W. 786 (1882); Brown Oil Co. *v.* Caldwell, 35 W. Va. 95, 13 S. E. 42 (1891).

[32] [1919] 3 W. W. R. 356. More *v.* Massini, 37 Cal. 432 (1869); Galveston City Surf Bathing Co. *v.* Heidenheimer, *supra;* Brown *v.* Heard, 85 Me. 294, 27 Atl. 182 (1893); Litchfield *v.* Ferguson, 141 Mass. 97, 6 N. E. 721 (1886). But a consideration of the whole instrument may show that the word "shore" was used in a popular sense, importing the land as far as low-water mark. Hathaway *v.* Wilson, 123 Mass. 359 (1877).

[1] Cincinnati, etc. Co. *v.* Hoffmeister, 62 Ohio St. 189, 56 N. E. 1033 (1900); Chicago, etc. R. Co. *v.* Crane, 113 U. S. 424, 432 (1889). For leading cases on the definition and history of *mandamus*, see McBride *v.* Grand Rapids, 32 Mich. 360 (1875); State *v.* Gibson, 187 Mo. 536, 86 S. W. 177 (1901); Chumasero *v.* Potts, 2 Mont. 242 (1875); State *v.* Marks, 6 Lea (Tenn.), 12 (1880). See also People *v.* Steele, 2 Barb. (N. Y.) 397, 416 (1851). See HIGH, EXTRAORDINARY REMEDIES, § 1; 2 POTTER, CORP., § 634.

[2] Duke *v.* Turner, 204 U. S. 623, 631 (1906); *In re* Rice, 155 U. S. 396, 403 (1894).

[3] Matter of Rooney, 26 Misc. 73, 56 N. Y. Supp. 483 (1899); Feltcher *v.* Tuttle, 151 Ill. 41, 37 N. E. 683 (1894).

[4] Hayes *v.* Morgan, 81 Ill. App. 665 (1898); Gibbs *v.* Commissioners, 19 Pick. (Mass.) 298 (1837); People *v.* Barnes, 114 N. Y. 317, 20 N. E. 609 (1889); Jones *v.* Allen, 13 N. J. L. 97 (1832); State *v.* Elliott, 108 Wis. 163, 84 N. W. 149 (1900).

[5] People *v.* Olsen, 215 Ill. 620, 74 N. E. 785 (1905); McCarthy *v.* Boston St. Comm., 188 Mass. 338, 74 N. E. 659 (1905); Gleistman *v.* Town of West New York, 74 N. J. L.

must be judicial,[6] equitably exercised,[7] guided by fixed rules.[8] Accordingly it will be denied where its issue would injuriously affect the public interest,[9] or the rights of third parties;[10] when it would be nugatory or unavailing,[11] create disorder or confusion,[12] or operate inequitably, imposing excessive burdens on the respondent.[13] The relator, to be successful, must show the good faith of his application,[14] the necessity or propriety of the requested relief,[15] and the lawfulness of the act sought to be enforced.[16] In addition, he must show a clear and complete legal right to the performance of the particular act in question.[17] Therefore, if the right is a disputed one,[18] inchoate,[19] or prospective,[20] doubtful,[21] or incomplete

74, 64 Atl. 1084 (1906); People *v.* Lindenthal, 77 N. Y. App. Div. 515, 78 N. Y. Supp. 997 (1902); *In re* Rice, *supra;* Rex *v.* Bristol Dock Co., 12 East, 428 (1810).

[6] McCarthy *v.* Boston St. Comm., *supra;* Shepherd *v.* Oakley, 181 N. Y. 339, 74 N. E. 227 (1905).

[7] State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556 (1905).

[8] State *v.* Holmes, 3 Neb. Unoff. 183, 91 N. W. 175 (1902); People *v.* N. Y. Police Board, 107 N. Y. 235, 13 N. E. 920 (1887).

[9] Effingham *v.* Hamilton, 68 Miss. 523, 10 So. 39 (1891) (refusal to order a change of textbooks, to avoid public inconvenience, although a clear right and duty existed); People *v.* Brooklyn Bd. of Assessors, 137 N. Y. 201, 33 N. E. 145 (1893).

[10] *In re* Hart, 159 N. Y. 278, 54 N. E. 44 (1902); United States *v.* Edmunds, 3 Wall. (U. S.) 563 (1865).

[11] People *v.* Church, 103 Ill. App. 132 (1902) (refusal of *mandamus* to perfect an appeal which could not be effective); People *v.* O'Keefe, 100 N. Y. 572, 3 N. E. 592 (1885); Com. *v.* Phil. County Comm'rs, 6 Whart. (Pa.) 476 (1841) (refusing to compel filing of an affirmation where such was too late to be of use); State *v.* Irwin, 40 Wash. 413, 82 Pac. 420 (1906); United States *v.* Norfolk, etc. R. Co., 118 Fed. 554 (1902).

[12] People *v.* Olsen, 215 Ill. 620, 74 N. E. 785 (1905); Rex *v.* Palmer, 8 East, 416 (1806).

[13] People *v.* Blocki, 203 Ill. 363, 67 N. E. 809 (1903) (refusing writ where the respondent would be subjected to an action for damages); Roll *v.* Perrine, 34 N. J. L. 254 (1870) (*semble*); Sibley *v.* Mobile, 22 Fed. Cas. No. 12,829 (1876); but see Com. *v.* Pittsburg, 209 Pa. St. 333, 58 Atl. 669 (1904).

[14] W. U. Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100 (1906) (refusing to order quotations for a bucket shop); Donahue *v.* State, 70 Neb. 72, 96 N. W. 1038 (1903) (refusing writ where relator was actuated by spite); People *v.* Adams, 18 N. Y. Supp. 896 (1892); but see Moores *v.* State, 71 Neb. 522, 99 N. W. 249 (1904).

[15] Kenneally *v.* Chicago, 220 Ill. 485, 77 N. E. 155 (1906); People *v.* Richmond County, 22 How. Pr. (N. Y.) 275 (1861); N. Y. Life, etc. Ins. Co. *v.* Wilson, 8 Pet. (U. S.) 291 (1884); Rex *v.* Godolphin, 8 A. & E. 338 (1838); Rex *v.* Chester, 1 M. & S. 101 (1813).

[16] Park *v.* Chandler, 113 Ga. 647, 39 S. E. 89 (1901).

[17] Burke *v.* Edgar, 67 Cal. 128, 7 Pac. 488 (1885); McNeill *v.* Chicago, 212 Ill. 481, 72 N. E. 450 (1904) (*de facto* policeman unable to compel restoration unless shown to be an officer *de jure* when excluded); Padavano *v.* Fagan, 66 N. J. L. 167, 44 Atl. 998 (1900); People *v.* N. Y. Bd. of Police, 107 N. Y. 235, 13 N. E. 920 (1887); Comm. *v.* James, 214 Pa. St. 319, 67 Atl. 743 (1907); *Ex parte* Cutting, 94 U. S. 14 (1876); Reg. *v.* Lewisham Union (1897), 1 Q. B. 498; Africans' Union Church *v.* Sanders, 1 Houst. (Del.) 100 (1855) (refusing to enforce a spiritual privilege, devoid of legal right, to be installed as a minister). Thus if the statute sustaining the right be unconstitutional, the writ will not issue. Van Horn *v.* State, 46 Neb. 82, 64 N. W. 365 (1895). See also HIGH, EXTRAORDINARY REMEDIES, § 431; State *v.* Ware, 13 Ore. 384, 10 Pac. 887 (1886); State *ex rel. v.* Janesville R. Co., 87 Wis. 79, 57 N. W. 972 (1894).

[18] State *v.* Clark, 55 Atl. (N. J.) 690 (1903); People *v.* Fromme, 30 Misc. 323, 63 N. Y. Supp. 583 (1900). Thus, where the right of the applicant is in litigation, the writ will generally be refused. Schwartz *v.* Large, 47 Kan. 304, 27 Pac. 993 (1891); Atty. Gen'l *v.* New Bedford, 128 Mass. 312 (1879); but *cf.* Oroville R. Co. *v.* Plumas County, 37 Cal. 354 (1869); Calveras County *v.* Brockway, 30 Cal. 325 (1866).

[19] *Ex parte* Harris, 52 Ala. 87 (1875); People *v.* Brooklyn, 1 Wend. (N. Y.) 318 (1828).

[20] United States *v.* Root, 22 App. Cas. (D. C.) 419 (1903).

[21] Mobile, etc. R. Co. *v.* People, 132 Ill. 559, 24 N. E. 643 (1890); State *v.* Williams,

because of unperformed conditions precedent,[22] purely equitable,[23] or impossible to enforce,[24] the writ will not issue. Technical rights will not be enforced through such proceedings at the expense of a violation of the spirit of a statute.[25] Abstract and moot questions will not be determined, nor will petty controversies be considered.[26] Though a performance,[27] or a willingness to perform pending the proceedings,[28] will bar the writ, a partial, imperfect, or illegal performance will not stay the proceedings.[29]

The nature of the duty to be enforced is an important element in the determination of the court's action. *Mandamus* is a remedy for official inaction.[30] The duty in question must therefore, generally speaking, be an existing one,[31] resulting from the occupation of an office or trust,[32] and clearly enjoined by law.[33] It is immaterial that the court's order requires continuous action [34] or enforces a continuing duty.[35] More

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99 Mo. 291, 12 S. W. 905 (1889); People *v.* Brush, 146 N. Y. 60, 40 N. E. 502 (1895); United States *v.* Thoman, 156 U. S. 353 (1894); *Ex parte* Cutting, *supra.*

[22] Williams *v.* Smith, 6 Cal. 91 (1856); Lochren *v.* Long, 6 App. Cas. (D. C.) 486 (1895); People *v.* Lyman, 67 N. Y. App. Div. 446, 73 N. Y. Supp. 987 (1901). *Cf.* O'Neill *v.* Reynolds, 116 Cal. 264, 48 Pac. 57 (1897), and People *v.* Monroe, 41 Misc. 198, 83 N. Y. Supp. 995 (1903) (where opposite views were taken as to the issuance of a mandate conditional upon the performance of a condition precedent). Rex *v.* Jothan, 3 T. R. 575 (1790).

[23] Sheerer *v.* Edgar, 76 Cal. 569, 18 Pac. 681 (1888); Burlington, etc. R. Co. *v.* People, 20 Colo. App. 181, 77 Pac. 1026 (1904); but see Tyler *v.* Houghton, 25 Cal. 26 (1864) (holding that a writ lies under a statute by one having an equitable interest to contest a land purchase).

[24] State *v.* Newman, 91 Mo. 445, 3 S. W. 849 (1887) (*mandamus* to compel certification of election refused where applicant did not possess necessary qualifications for office).

[25] State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556 (1905); People *v.* Brooklyn Bd. of Assessors, 137 N. Y. 201, 33 N. E. 145 (1893); Matter of Schofield, 102 N. Y. App. Div. 358, 92 N. Y. Supp. 672 (1905).

[26] State *v.* Lewis, 111 La. 693, 35 So. 816 (1904) (grand juror not reinstated after the jury had been discharged); Hall *v.* Staunton, 55 W. Va. 684, 47 S. E. 265 (1904); but see People *v.* Republican Party Committee, 25 N. Y. App. Div. 339, 49 N. Y. Supp. 723 (1898) (here the question was one of public interest).

[27] People *v.* Chapin, 104 N. Y. 96, 10 N. E. 141 (1887); United States *v.* Kendall, 26 Fed. Cas. No. 15, 518 (1838).

[28] People *v.* Dulaney, 96 Ill. 503 (1880).

[29] State *v.* Bare, 60 W. Va. 483, 56 S. E. 390 (1906) (holding that a mere colorable action was no bar to the issuance of the writ).

[30] Atlanta *v.* Wright, 119 Ga. 207, 45 S. E. 994 (1903); *Ex parte* Crane, 5 Pet. (U. S.) 190 (1831).

[31] *Ex parte* Rowland, 104 U. S. 604 (1881). It must exist independently of the writ. Internat. Const. Co. *v.* Lamont, 155 U. S. 303 (1894).

[32] Placard *v.* State, 148 Ind. 305, 47 N. E. 623 (1897); Com. *v.* Walton, 3 Pa. Dist. 391 (1894); State *v.* Howard County Ct., 39 Mo. 375 (1867) (refusing to enforce a simple common-law right between individuals). Chicago, etc. R. Co. *v.* Crane, 113 U. S. 424 (1881).

[33] Maxwell *v.* San Francisco, 139 Cal. 229, 72 Pac. 996 (1903); Case *v.* Sullivan, 222 Ill. 57, 78 N. E. 37 (1906); Bacon *v.* Cumberland County, 69 N. J. L. 195, 54 Atl. 234 (1903); Chase *v.* Saratoga County, 33 Barb. (N. Y.) 603 (1861); Internat. Const. Co. *v.* Lamont, *supra;* Reeside *v.* Walker, 11 How. (U. S.) 272 (1850).

[34] Goodell *v.* Woodbury, 71 N. H. 378, 52 Atl. 855 (1902); People *v.* N. Y., etc. R. Co., 28 Hun (N. Y.), 543 (1883) (requiring a railroad to exercise its duties as a carrier); Atty. Genl. *v.* Boston, 123 Mass. 640 (1877) (city compelled to continue to collect ferry tolls).

[35] State *v.* A. C. L. R. Co., 48 Fla. 114, 37 So. 652 (1904).

specifically, the distinction between ministerial and discretionary duties must be noted. It is undisputed that a *mandamus* should issue only where the act to be ordered is merely ministerial, with regard to the performance of which neither judgment nor discretion is left in the officer.[36] Accordingly, though the court may compel the exercise of discretion, it may not control the mode thereof.[37] Thus, the problem in *mandamus* proceedings is to determine whether the relator seeks to obtain the performance of an undisputed duty, or to dictate the conditions precedent which shall give rise to this obligation to act, thereby controlling the exercise of the officer's discretion. If the latter is his objective, he will inevitably fail. The judgment and discretion reposed in an officer as a part of his official functions are to be exercised by him only and not by the relator through the court.[38]

The line of demarcation between ministerial duties and those involving the exercise of discretion, at best a vague one, is perhaps most perceptible in *mandamus* proceedings brought against executive officers of the government. That such proceedings are maintainable is clear, the official character of a party not exempting him from the writ, provided, of course, that the duty is merely ministerial.[39] A ministerial act may be regarded as one which a public officer or agent is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own opinion concerning the propriety of the act to be performed.[40] Discretion may be defined, when applied to public officials, as the power or right conferred upon them by law of acting officially, under certain circumstances, solely according to the dictates of their judgment and conscience.[41]

The application of these principles to cases where the duty sought to be

[36] *In re* Morse, 18 Pick. (Mass.) 443 (1836); People *v.* Land Comm'rs, 149 N. Y. 26, 43 N. E. 418 (1896); Marbury *v.* Madison, 1 Cranch (U. S.), 137 (1803); Reg. *v.* Met. Police Dist., 4 B. & S. 593 (1863).

[37] People *v.* Westchester County, 12 Barb. (N. Y.) 446 (1851); Gaines *v.* Thompson, 7 Wall. (U. S.) 347 (1868); but see under statute, State *v.* Clausen, 44 Wash. 437, 87 Pac. 498 (1906).

[38] Gaines *v.* Thompson, *supra;* Decatur *v.* Paulding, 14 Pet. (U. S.) 497 (1840); United States *v.* Guthrie, 17 How. (U. S.) 284 (1854).

[39] The authorities are divided as to the power of the courts to control the chief executive of the state government. See 6 L. R. A. (N. S.) 750; 32 L. R. A. (N. S.) 355; 12 HARV. L. REV. 208. But all are agreed that such immunity does not extend to the heads of executive departments. Pacheco *v.* Beck, 52 Cal. 3 (1877); Bonner *v.* State, 7 Ga. 473 (1849). Such a proceeding against a state officer is not a suit against the state within the meaning of the Eleventh Amendment. Bd. of Liquidation *v.* McComb, 92 U. S. 531 (1875); Internat. Postal Supply Co. *v.* Bruce, 194 U. S. 601, 616 (1903). See 20 HARV. L. REV. 245. However, a claim which cannot be enforced against the United States cannot be enforced circuitously by a *mandamus* proceeding against one of its officers. Reeside *v.* Walker, 11 How. (U. S.) 272, 290 (1850). It has been said that *mandamus* would not issue against the President. Mississippi *v.* Johnson, 4 Wall. (U. S.) 475, 499 (1866). But it will issue against the heads of executive departments of the United States. Marbury *v.* Madison, 1 Cranch (U. S.), 137 (1803); Kendall *v.* United States, 12 Pet. (U. S.) 524 (1838); Boynton *v.* Blaine, 139 U. S. 306 (1890). See 23 HARV. L. REV. 633.

[40] *Ex parte* Batesville, etc. R. Co., 39 Ark. 82, 85 (1882); Amer. Cas. Ins. Co. *v.* Fyler, 60 Conn. 448, 22 Atl. 494 (1891). For other definitions, see Sullivan *v.* Shanklin, 63 Cal. 247 (1883); Henkel *v.* Millard, 97 Md. 24, 54 Atl. 657 (1903); Mississippi *v.* Johnson, *supra.*

[41] State *v.* Hultz, 106 Mo. 41, 16 S. W. 940 (1891). See Rio Grande County *v.* Lewis, 28 Colo. 378, 65 Pac. 51 (1901).

enforced involves the determination of questions of fact is not always easy. It is clear that an act may be ministerial, though the existence of the obligation to act depends upon the determination of a question of fact;[42] but where the duty requires an examination of evidence and a decision on questions of law and fact, it may be safely classified as discretionary.[43] The recent Supreme Court case of *United States ex rel.* v. *Lane et al.*[44] affords an illustration of the importance of this distinction. The duty of a public land officer to issue a land patent depends upon the performance of certain conditions precedent with respect to that land by the petitioner.[45] Clearly, when no doubt exists as to the fact of such performance, the execution and delivery of the patent, if arbitrarily withheld, may be enforced by *mandamus*.[46] The above case, however, states the well-settled rule that the granting of a patent where hearing, proof, and decision are required,[47] and the exercise of judgment and discretion necessary,[48] is not to be subjected to supervision by *mandamus*.[49] It is not surprising, therefore, that no case has been found in which, under such circumstances, the writ will be granted to compel the issuance of a patent by the land department.

Most of the duties of an executive officer are not merely ministerial. In the administration of the various and important concerns of his office the head of an executive department of the government is continually required to exercise judgment and discretion. He must so act in expounding the laws of Congress under which he is from time to time required to proceed in his duties.[50] The courts will not, therefore, interfere with these officers in the exercise of their ordinary official duties, even when these necessitate an interpretation of the law, inasmuch as the court has no appellate power for that purpose.[51] The deference due a

[42] Flournoy *v.* Jeffersonville, 17 Ind. 169 (1861); Marcum *v.* Ballot Comm'rs, 42 W. Va. 263, 26 S. E. 281 (1896).

[43] Cook County *v.* People, 78 Ill. App. 586 (1898); United States *v.* Edmunds, 5 Wall. (U. S.) 563 (1866).

[44] U. S. Sup. Ct., October Term, 1919, No. 36.

[45] 33 STAT. AT L. 525 (1904).

[46] United States *v.* Hitchcock, 19 App. Cas. (D. C.) 333 (1902); State *ex rel.* v. Nichols, 42 La. Ann. 223, 7 So. 738 (1890). But discretionary acts will be reviewed and controlled if the discretion has been abused. State *ex rel.* Moody *v.* Barnes, 25 Fla. 298, 5 So. 722 (1899); People *v.* Van Cleave, 183 Ill. 330, 55 N. E. 698 (1899) (arbitrary action); Zanone *v.* Mound City, 103 Ill. 552 (1882); State Bd. *v.* People, 123 Ill. 227 (1887) (due to personal motive); Baird *v.* Bd. of Supervisors, 138 N. Y. 95, 33 N. E. 827 (1893) (refusal to give proper hearing); United States *v.* Schurz, 102 U. S. 378 (1880) (discretion wrongfully based on ground not within official discretion). See 7 L. R. A. (N. S.) 525.

[47] Johnson *v.* Towsley, 13 Wall. (U. S.) 72 (1871); United States *v.* Comm'rs, 5 Wall. (U. S.) 563 (1866); Castro *v.* Hendricks, 23 How. (U. S.) 438 (1859).

[48] West *v.* Hitchcock, 205 U. S. 580 (1906); *In re* Emblen, 161 U. S. 52, 56 (1895); Carrick *v.* Lamar, 116 U. S. 423 (1885).

[49] Riverside Oil Co. *v.* Hitchcock, 190 U. S. 316 (1902); Bockfinger *v.* Foster, 190 U. S. 116 (1902); Johnson *v.* Towsley, *supra;* Litchfield *v.* Register, 9 Wall. (U. S.) 575 (1869); Cox *v.* United States, 9 Wall. (U. S.) 298 (1869); Gaines *v.* Thompson, 7 Wall. (U. S.) 347 (1868); Castro *v.* Hendricks, *supra;* The Secretary *v.* McGarrahan, 9 How. (U. S.) 298 (1850). But of course, after a patent has been regularly made out and recorded, its delivery may be compelled. United States *v.* Schurz, *supra.*

[50] Decatur *v.* Paulding, 14 Pet. (U. S.) 497, 515 (1840).

[51] Riverside Oil Co. *v.* Hitchcock, *supra;* Roberts *v.* United States, 176 U. S. 221 (1899). But performance of a duty imposed by statute will be compelled, though the officer must construe the statute to determine the nature of the duty. Roberts *v.* United

coördinate department of the government leads the courts to resolve every reasonable doubt in favor of freedom of executive action and to require a clear case before they will proceed to control it.

ERRONEOUS DESCRIPTION OF LAND IN A WILL. — When a testator intends to devise a plot of land and in his will inadvertently gives it the wrong township, range, or lot number, can the lot the testator intended pass under the will? For example, if the testator owns only lot number 32 in a certain township and it plainly appears from extrinsic evidence that it was that lot that he intended to devise, but in the will the lot is designated number 31, can lot number 32 pass?[1] Courts have not jurisdiction to correct mistakes in wills by reformation.[2] So if the result is to be attained it must be by construing the words in the will so as to apply to the property the testator intended to give.[3]

It is always possible under the maxim *Falsa demonstratio non nocet* for a court to disregard portions of a description shown to be erroneous, and to apply the remaining true portion.[4] In the cases where it is known that the testator intended to devise a piece of land other than that designated in the will, the problem of construction becomes one of the sufficiency of the description after disregarding the erroneous lot numbering. This is true no matter what theory of interpretation is adopted. The orthodox view is that expounded by Vice-Chancellor Wigram,[5] that the object of interpretation is never "what the testator meant" but "what is the meaning of his words;" or, as Mr. Kales puts it, the subject matter of interpretation is always the legal act contained in the writing.[6] Clearly this leaves the question one of the sufficiency of the words. But this is no less the case if the theory of Professor Hawkins is followed, that the sole object of interpretation is to determine the intention of the writer, for Professor Hawkins admits that in interpreting a legal document there is

States, *supra;* United States *v.* Black, 128 U. S. 40, 48 (1888). Also, the court has power to grant relief to an individual aggrieved by a decision based upon a statute inapplicable to the facts in question. American School, etc. *v.* McAnnulty, 187 U. S. 94 (1902); Burfenning *v.* Chicago, St. Paul, etc. R. Co., 163 U. S. 321 (1896).

[1] The problem has been presented by several recent cases. Stevenson *v.* Stevenson, 285 Ill. 486, 121 N. E. 202 (1918); Perkins *v.* O'Donald, 82 So. 401 (Fla., 1919); Wilmes *v.* Tiernay, 174 N. W. 271 (Ia., 1919). See RECENT CASES, *infra*, p. 486.

[2] Newburgh *v.* Newburgh, 5 Mad. 364 (1820). The English courts have gone far in striking out words inserted by mistake. Morrell *v.* Morrell, 7 P. D. 68 (1882); Goods of Boehm, [1891] P. 247. But they will not substitute one word for another. Goods of Schott, [1901] P. 190, overruling Goods of Bushell, 13 P. D. 7 (1887). But *cf.* Estate of King, 53 IRISH LAW TIMES, 60 (1919), where, on facts nearly identical with those of Goods of Bushell, the same result was reached by interpretation.

[3] The problem, of course, is not at all the same as that which would be presented if it were shown that the testator used "thirty-one" as a symbol or code number for "thirty-two." See Doe, C. J., in Tilton *v.* American Bible Society, 60 N. H. 377, 383, "A person known to a testator as A. B. and to all others as C. D. may take a legacy given to A. B." But see Holmes, "The Theory of Legal interpretation," 12 HARV. L. REV. 417, 419. And see 21 HARV. L. REV. 434.

[4] See WIGMORE, EVIDENCE, § 2476.

[5] See WIGRAM, EXTRINSIC EVIDENCE IN THE INTERPRETATION OF WILLS, Introductory Observations, plac. 9 (2 American ed., 53).

[6] See Kales, "Considerations Preliminary to the Practice of the Art of Interpreting Writings," 28 YALE L. JOUR. 33, 34.